5-28-2014

State v. Stone-Jones Appellant's Brief Dckt. 41513

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. SHIRLEY STONE-JONES, Defendant-Appellant.	NOS. 41513 & 41607 ADA COUNTY CASE NOS. CR 2012-6569 & CR 2012-9060 APPELLANT'S BRIEF

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

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STATEMENT OF THE CASE

Nature of the Case

In the first of two district court cases, Shirley Stone-Jones entered a conditional plea of guilty to one count possession of a controlled substance with the intent to deliver and an enhancement for multiple drug offenses. In the second case, Ms. Stone-Jones pleaded guilty to one count of possession of a controlled substance, and one count of forgery. Ms. Stone-Jones appeals from the judgments of conviction, which imposed concurrent sentences of twenty-five years, with three years fixed; seven years, with four years fixed; and fourteen years, with four years fixed, for each respective count. The two appeals were consolidated by the Idaho Supreme Court. On appeal, Ms. Stone-Jones asserts that the district court erred when it denied her motion to suppress in the first case. She also asserts that the district court abused its discretion when it imposed her sentences.

Statement of the Facts and Course of Proceedings

Supreme Court Docket No. 41513 (district court case number CR 2012-6569 (*hereinafter*, first case)) and Supreme Court Docket No. 41607 (district court case number CR 2012-9060 (*hereinafter,* second case)) have been consolidated for appellate purposes.

In the first case, Boise Police Officer Cromwell testified that on May 2, 2012, he received a tip from an informant that Ms. Stone-Jones was in possession of narcotics and on her way to the Home Depot in Meridian to purchase more narcotics. (Tr. 4/29/13, p.81, Ls.11-25.) The informant said Ms. Stone-Jones would be in a black

Chevy Blazer. (Tr. 4/29/13, p.82, Ls.6-10.) Based on this information, Officer Cromwell asked an undercover officer, Officer Phillips, to go to the Home Depot and watch for the Blazer. (Tr. 4/29/13, p.82, Ls.19-25 – p.83, Ls.1-18.) Officer Phillips later located that vehicle in front of the Home Depot. (Tr. 4/23/13, p.105, Ls.18-23.) He watched the vehicle for a few minutes until Ms. Stone-Jones stepped out of the passenger side and got into a smaller car. (Tr. 4/23/13, p.105, Ls.13-25.) The smaller car then circled the parking lot several times until it stopped, and Ms. Stone-Jones got back in the Blazer. (Tr. 4/23/13, p.107, Ls.21-25 – p.108, Ls.1-3.) Officer Phillips never witnessed anyone in possession of any narcotics or any transaction taking place in the parking lot. (Tr. 4/23/13, p.121, Ls.11-18.)

Subsequently, the Blazer left the lot, and drove back towards Boise. (Tr. 4/23/13, p.108, Ls.13-16.) Officer Phillips followed and later testified that he witnessed the vehicle fail to signal twice and cross the "fog line" several times. (Tr. 4/23/13, p.110, Ls.9-13, p.111, Ls.5-12.) He relayed this information back to Officer Cromwell, who then started following the Blazer in a marked police car. (Tr. 4/23/13, p.111, Ls.13-21.) Another officer, Officer Montoya, joined soon thereafter, and both officers then stopped the vehicle for the traffic infractions.[1] (Tr. 4/23/13, p.112. Ls.3-24.)

After the stop, Officer Cromwell approached the driver, Mr. McQuellan, asked for his license and registration, and observed sweat on his forehead. (Tr. 4/29/13, p.85, Ls.12-25 – p.86, Ls.1-2.) Officer Cromwell explained that he thought this was unusual because it was a cool night. (Tr. 4/29/13, p.86, Ls.3-7.) Additionally, Officer Cromwell said Mr. McQuellan's head and hands were shaking. (Tr. 4/29/13, p.86, Ls.8-14.)

Officer Cromwell thought Mr. McQuellan might be on methamphetamine, so he called for the help of a DUI investigative specialist, Officer Gibson. (Tr. 4/29/13, p.87, Ls.12-21, p.90, Ls.2-7.) He then asked Mr. McQuellen to step out of the vehicle. (Tr. 4/29/13, p.91, Ls.21-25.) Shortly thereafter, another officer, Officer Martinez, asked Ms. Stone-Jones to step out of the vehicle, and when she did, she brought her purse with her. (Tr. 4/29/13, p.9, Ls.24-25 – p.10, Ls.1-7.)

Prior to Officer Gibson's arrival, Officer Montoya walked his drug detection canine ("Jax") around the vehicle, and the dog alerted on the front bumper. (Tr. 4/29/13, p.52, Ls.16-25 – p.53, Ls.1-14.) Officer Montoya testified that this established probable cause to search the vehicle, and a full search of the vehicle ensued, but no drugs were found. (Tr. 4/29/13, p.53, Ls.15-19.) After no drugs were found, Officer Montoya put Jax back in his vehicle. (Tr. 4/29/13, p.68, Ls.6-9.)

When Officer Gibson arrived, both Mr. McQuellan and Ms. Stone-Jones were sitting on the curb next to their vehicle. (Tr. 4/23/13, p.77, Ls.10-12.) Officer Gibson then performed field sobriety tests on Mr. McQuellan and established – within approximately seven minutes - that he was not under the influence of any drugs or alcohol. (Tr. 4/23/13, p.78, Ls.1-25, p.80, Ls.3-6, p.84, Ls.19-25; State's Exhibit S-3[2] *(hereinafter, Gibson audio) at* 7:00 – 7:15.) Mr. McQuellan was therefore taken back to the curb where Ms. Stone-Jones was still waiting. (Tr. 4/23/14, p.84, Ls.24-25 – p.85, Ls.1-12.) During that seven minute period, Ms. Stone-Jones was talking with Officer

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[1] At this point, Officer Phillips simply watched from a distance until he was sure the situation was under control and then left the scene. (Tr., 4/23/14, p.113, Ls.4-24.)

[2] State's Exhibit S-3 is an audio recording of Officer Gibson's conversation with Mr. McQuellan and interactions with other officers. It was admitted on the first day of the suppression hearing. (Tr. 4/23/13, p.80, Ls.11-18.)

Martinez. (Tr. 4/29/13, p.9, Ls.8-9; State's Exhibit S-2[3] (*hereinafter, Martinez audio*) *at* 12:15 – 19:35) There was no further questioning or investigation of Ms. Stone-Jones during that period; the conversation consisted of small talk. (*Martinez audio at* 12:15 – 19:35.)

At the same time as Officer Gibson was returning Mr. McQuellan to the curb, Officer Cromwell started speaking with Ms. Stone-Jones about coming with him to answer questions, and they were discussing whether she would leave her purse behind because Officer Cromwell said he was concerned that it might contain a weapon. (Tr. 4/29/13, p.95, Ls.24-25 – p.96, Ls.1-5, p.98, Ls.3-15; *Gibson audio at* 7:00-7:30.) Ultimately, she agreed to leave her purse with Mr. McQuellan while she went to be questioned by Officer Cromwell. (Tr. 4/23/13, p.32, Ls.20-25 – p.33, Ls.1-17; R., p.136.)

Officer Cromwell said that he wanted to question her to get information about Mr. McQuellan. (Tr. 4/29/13, p.99, Ls.2-7.) When asked what his intentions were regarding the purse before the dog alerted on it, he said he was just planning on leaving it there because he was "more interested in Mr. McQuellen." (Tr. 4/29/13, p.136, Ls.13-17.) But once Ms. Stone-Jones left the area, Officer Martinez asked Mr. McQuellen to step away from the curb also, so he could "talk to him, let him know, you know – many times people are confused about, you know, the whole situation of what it is that it entails when it comes to being stopped." (Tr. 4/29/13, p.25, Ls.3-10.) So, according to

[3] State's Exhibit S-2 is an audio recording of Officer Martinez's conversations with Ms. Stone-Jones and Mr. McQuellan. It was admitted on the first day of the suppression hearing. (Tr. 4/23/13, p.101, Ls.1-5.)

Officer Martinez, he was just "trying to relieve the confusion" by asking him to step away with him and, as a result, leave the purse on the curb. (Tr. 4/29/13, p.25, Ls.10-11.)

Immediately after that, Officer Montoya got Jax back out of the car, and the dog alerted after he was directed to do an "area sniff" near the purse. (Tr. 4/29/13, p.54, Ls.18-25, p.55, Ls.1-18, p.56, Ls.15-23.) The district court later concluded that, although the purpose of the stop had ended, because "these events were occurring simultaneously or in close proximity to the time that Officer Gibson was concluding his DUI investigation . . . the area sniff conducted by Officer Montoya and Jax did not impermissibly extend the length of the detention." (R., p.140.)

Subsequently, Officer Cromwell told Ms. Stone-Jones that the dog alert created probable cause for him to seize her purse. (Tr. 4/29/13, p.137, Ls.11-15.) He told her that she now only had two options: she could either consent to a search of her purse, or he would seize it and get a warrant to search it. (Tr. 4/29/13, p.137, Ls.18-25, p.103, Ls.10-21.) Ms. Stone-Jones did not consent to a search, so she left the purse with Officer Cromwell. (Tr., 4/29/13, p.103, Ls.22-25.) Once a warrant was issued, officers discovered 26 grams of methamphetamine, $113 in cash, a "pay/owe" sheet, and a methamphetamine pipe in her purse. (Presentence Investigation Report (*hereinafter*, PSI) p.4.)[4]

Ms. Stone-Jones was charged with one count of possession of a controlled substance with the intent to deliver, and one misdemeanor count of possession of drug paraphernalia. (R., pp.38-39.) The State also filed a second information charging an

[4] All references to the PSI and its attachments refer to the 376-page electronic document entitled "Stone-JonesPSI."

enhancement for multiple drug offenses under I.C. § 37-2739. (R., pp.53-54.) Ms. Stone-Jones filed a motion to suppress, and a brief in support of that motion, arguing that her prolonged detention, and the subsequent seizure of her purse, violated her Fourth Amendment rights. (R., pp.65-75.) After a hearing on the motion to suppress, the district court denied the motion. (R., pp.135-141.) Ms. Stone-Jones then entered a conditional guilty plea to one count of possession of methamphetamine with the intent to deliver, and the enhancement for multiple drug offenses; the plea preserved the ability to challenge the district court's order denying her motion to suppress. (Tr. 6/28/13, p.160, Ls.21-22, p.161, Ls.1-4; R., p.153.) In exchange, the State dismissed the misdemeanor paraphernalia charge. (Tr., 6/28/13, p.160, Ls.22-23.)

At the sentencing hearing, the State requested a unified sentence of 25 years, with 10 years fixed. (Tr. 9/18/13, p.200, Ls.8-11.) Ms. Stone-Jones's counsel proposed two options. He asked the court to consider probation with a significant underlying sentence of 20 years, with 10 years fixed, or, if the court was not willing to impose probation, a unified sentence of 12 years, with 2 years fixed. (Tr. 9/18/13, p.210, Ls.11-25 – p.211, Ls.1-5.) The district court imposed a unified sentence of 25 years, with 3 years fixed. (Tr. 9/18/13, p.233, Ls.6-10; R., pp.170-173.) Ms. Stone-Jones then filed a notice of appeal that was timely from the judgment of conviction. (R., pp.179-181.)

In the second case, Boise police executed a search warrant at Ms. Stone-Jones's home while she was out on bond. (R., p.15; PSI, p.4.) In Ms. Stone-Jones's room, officers found .08 grams of methamphetamine, glass pipes with

methamphetamine residue, and a digital scale. (PSI, p.4.) Also, under a computer printer cover, officers found a counterfeit $100 bill. (PSI, p.5.)

Ms. Stone-Jones was charged with one count of possession of a controlled substance, one count of forgery, and one misdemeanor count of possession of drug paraphernalia. (R., pp.28-29.) The State also filed a second information charging an enhancement for multiple drug offenses under I.C. § 37-2739. (R., pp.37-38.) Ms. Stone-Jones pleaded guilty to one count of possession of methamphetamine and one count of forgery. (Tr. 8/15/13, p.5, Ls.10-12, p.26. Ls.19-25 – p.27, Ls.1-12.) In exchange, the State dismissed the misdemeanor charge and the enhancement for multiple drug offenses. (Tr. 8/15/13, p.5, Ls.12-14.)

At the sentencing hearing, the State requested concurrent unified sentences of seven years, with four years fixed, on the first count, and fourteen years, with four years fixed, on the second count. (Tr. 11/6/13, p.16, Ls.17-20.) The State also requested that these sentences run concurrently with the sentence in the first case. (Tr. 11/6/13, p.16, Ls.22-23.) Ms. Stone-Jones's counsel requested concurrent unified sentences of seven years, with three years fixed, for the first count, and ten years, with three years fixed for the second count. (Tr. 11/6/13, p.20, Ls.18-23.) The district court imposed concurrent unified sentences of seven years, with four years fixed, on the first count, and fourteen years, with four years fixed, on the second count. (Tr. 11/6/13, p.26, Ls.17-24; R., pp.70-73.) It also stated that Ms. Stone-Jones would get credit for time served and that these sentences would run concurrently with the sentence in the first case. (Tr. 11/6/13, p.26. L.25 – p.27, Ls.1-3.) Ms. Stone-Jones filed a notice of appeal that was timely from the judgment of conviction. (R., pp.78-80.)

ISSUES

1. Did the district court err when it denied Ms. Stone-Jones's motion to suppress?

2. Did the district court abuse its discretion when it imposed concurrent, unified sentences of twenty-five years, with three years fixed; seven years, with four years fixed; and fourteen years, with four years fixed, following Ms. Stone-Jones's pleas of guilty to possession of a controlled substance with the intent to deliver, possession of a controlled substance, and forgery?

ARGUMENT

I.

The District Court Erred When It Denied Ms. Stone-Jones's Motion To Suppress

A. Introduction

Shirley Stone-Jones entered a conditional plea of guilty to the charge of possession of a controlled substance with the intent to deliver, preserving her right to challenge the district court's order denying her Motion to Suppress. Ms. Stone-Jones asserts that the district court erred in denying her Motion to Suppress because her prolonged detention violated her Fourth Amendment rights.

B. Standard Of Review

In *State v. Cutler*, 143 Idaho 297 (Ct. App. 2006), the Court of Appeals articulated the following standard of review for an appeal from a motion to suppress:

> The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact which are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court.

Id. at 302 (citations omitted).

C. The District Court Erred When It Denied Ms. Stone-Jones's Motion To Suppress Because Her Detention Was Illegally Prolonged And, Therefore, Any Evidence Collected Should Have Been Suppressed As Fruit Of Illegal Government Activity

The Fourth Amendment to the United States Constitution, and Article I, Section 17 of the Idaho Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."

U.S. Const. amend. IV; Idaho Const. art. I, § 17. The purpose of this constitutional right is to "impose a standard of reasonableness upon the exercise of discretion by governmental agents and thereby safeguard an individual's privacy and security against arbitrary invasions." *State v. Maddox*, 137 Idaho 821, 824 (Ct. App. 2002). Searches or detentions conducted without a warrant are presumptively unreasonable. *Coolidge v. New Hampshire,* 403 U.S. 443, 454–55 (1971); *State v. Butcher,* 137 Idaho 125, 129 (Ct. App. 2002).

A traffic stop is a seizure of the driver and passengers in a vehicle and "is therefore subject to Fourth Amendment strictures, but because it is limited in scope and duration, it is analogous to an investigative detention." *State v. Stewart*, 145 Idaho 641, 644 (Ct. App. 2008). An investigative detention "must be temporary and last no longer than necessary to effectuate the purpose of the stop." *State v. Henage*, 143 Idaho 655, 658 (2007) (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983)). And, "where a person is detained, the scope of detention must be carefully tailored to its underlying justification." *State v. Aguirre*, 141 Idaho 560, 563 (Ct. App. 2005) (quoting *Royer,* 460 U.S. at 500).

The State bears the burden to establish that the detention "was based on reasonable suspicion and sufficiently limited in scope and duration to satisfy the conditions" of an investigative detention. *State v. Bordeaux*, 148 Idaho 1, 8 (Ct. App. 2009) (*citing Royer*, 460 U.S. at 500). When the State fails to meet this burden, "[a]ny evidence seized pursuant to . . . an unreasonable detention is 'fruit of the poisonous tree' and is, therefore, inadmissible." *Id.* at 6 (quoting *Wong Sun v. United States*, 371 U.S. 471, 487 (1963)). Here, Ms. Stone-Jones's detention was not tailored to the

underlying justification; it lasted longer than necessary to effectuate the purpose of the stop because Officer Cromwell continued to question Ms. Stone-Jones after the car had been searched and the sobriety tests were complete. The detention was therefore unreasonable.

1. Once The DUI Investigation Was Complete, The Purpose Of The Stop Was Accomplished, So Officer Cromwell's Questioning, and Jax's Area Sniff, Impermissibly Extended The Detention.

Ms. Stone-Jones does not challenge the initial stop or the subsequent DUI investigation. Rather, she asserts that Officer Cromwell unlawfully prolonged the detention after the DUI investigation was completed. When an officer continues to detain the occupants of a vehicle after the purpose of the stop is accomplished, that detention cannot be justified. The Idaho Court of Appeals applied this principle when an officer pulled over a vehicle for speeding and issued a warning. It held that "the purpose was accomplished when" the officer issued the warning. *State v. Gutierrez*, 137 Idaho 647, 652 (Ct. App. 2002). There, after the warning, the officer proceeded to question the driver about drugs, alcohol, weapons. Subsequently, the driver consented to a search of his vehicle, and the officer discovered marijuana and paraphernalia. *Id.* at 649. The Court of Appeals held that "[a]lthough the duration of this questioning was relatively short, *lasting sixty to ninety seconds*, it was nonetheless an unwarranted intrusion upon the vehicle occupants' privacy and liberty." *Id.* (emphasis added). The Court explained that it was "[h]eeding the Supreme Court's caution that an individual 'may not be detained even momentarily without reasonable, objective grounds for doing so.'" *Id.* at 652 (quoting *Royer*, 460 U.S. at 498). Therefore, it concluded that the

extended detention and questioning was unlawful, and the driver's consent to search as a result of the questioning was ineffective. *Id.*

The facts here are very similar. And Ms. Stone-Jones does not dispute the district court's findings of fact, only its conclusions. Once Mr. McQuellan passed his DUI test, the purpose of the stop ended, and further questioning was unlawful. In its Memorandum Decision and Order, the district court stated that "[a]s Officer Gibson was finishing his investigation, Officer Cromwell asked Defendant to step away from the curb area so he could speak to her." (R., p.139.) The court went on to say that "[b]y the time Officer Gibson was returning the driver to the curb area where Defendant had been sitting, Defendant and Officer Cromwell were already having a discussion about whether she would leave her purse there while she stepped away to speak to Officer Cromwell." (R., p.139.)

The fact that Officer Gibson returned Mr. McQuellen to the curb was a clear indication that Mr. McQuellan had passed his DUI test, and the purpose of the stop was accomplished. At that point the "discussion" between Officer Cromwell and Ms. Stone-Jones should have ceased. The actual questioning that took place after Ms. Stone-Jones agreed to go with Officer Cromwell was not tailored to the purpose of the stop and obviously took place after the DUI investigation was complete. The district court specifically found that "[j]ust over a minute" after this initial discussion, Jax alerted on the purse. (R., p.140.) As the *Gutierrez* Court pointed out, the length of the questioning is irrelevant under *Royer*; a defendant cannot be detained for even one moment longer than necessary. And, in *Gutierrez*, as here, the Court noted that the questioning was

only sixty to ninety seconds. Even sixty seconds of additional questioning is an unwarranted intrusion.

Here, the district court found that Officer Cromwell's questioning and Jax's alert occurred "simultaneously or in close proximity to the time that Officer Gibson was concluding his DUI investigation." (R., p.140.)[5] While Officer Cromwell's initial request that Ms. Stone-Jones accompany him to answer questions may have occurred simultaneously with the conclusion of the DUI investigation, the actual questioning and canine alert took place after it was concluded. And even questioning that is "in close proximity" to the conclusion of a stop cannot be justified. Ms. Stone-Jones was still on the curb when Officer Gibson returned Mr. McQuellan there. (*See* Tr. 4/23/14, p.84, Ls.24-25 – p.85, Ls.1-12; *Gibson audio at* 7:00-7:30.) Officer Gibson's audio recording reflects that he told Mr. McQuellen that he was finished and then asked Officer Cromwell where he would like Mr. McQuellen to sit back down. (*Gibson audio at* 7:00-7:30.) At that moment, Officer Cromwell can be heard telling Ms. Stone-Jones that she can leave her purse or let him search it *prior* to any questioning. (*Gibson audio at* 7:00-7:30.) In its Memorandum in Opposition to Defendant's Motion to Suppress, the State admitted that

> [a]lthough the intent of Cromwell's desire to speak with Stone-Jones may well have included questions relating to narcotics obtained before the stop and expanded during the course of the stop up to that point, the length of the

[5] The district court framed the issue as whether Jax's dog sniff impermissibly extended the stop. The use of a drug dog cannot lengthen the duration of a stop under *Illinois v. Caballes,* 543 U.S. 405, 409-410 (2005). This is the same basic issue as extending a stop with additional questioning because such questioning cannot lengthen the duration of a detention under *Royer, supra.* Both *Caballes* and *Royer* support the idea that a detention cannot be illegally prolonged, even momentarily. Here, Officer Cromwell's questioning allowed Officer Montoya to get Jax back out of the car for an area sniff, so, under either theory, the detention was illegally prolonged.

> conversation and detention was extremely brief and very quickly became irrelevant because Jax very quickly alerted to the odor of narcotics on the purse almost immediately after Cromwell initiated the conversation.

(R., p.94.) The repetition of such terms as "extremely brief," "very quickly," and "almost immediately" not only denotes the State's concern that the detention may indeed have been too long but, more importantly, it does nothing to prove that the detention was sufficiently limited; extending the stop, even momentarily, cannot be justified.

Thus, it is clear from the suppression hearing testimony and the audio that Mr. McQuellan was returned to the curb right as Officer Cromwell started to speak with Ms. Stone-Jones and certainly before she agreed to leave her purse with Mr. McQuellan. Therefore, Officer Cromwell knew that Mr. McQuellan had passed the field sobriety tests, and the purpose of the stop was accomplished. At that point, Officer Cromwell should have let them both go. Instead, his questioning, and Jax's dog sniff, impermissibly extended the detention. The drug investigation was over once the vehicle had been searched. The DUI investigation was over once Mr. McQuellan passed the field sobriety tests. At that point, any further questioning was unconstitutional.

2. All Evidence Collected Following The Illegal Detention Must Be Suppressed As It Is Fruit Of The Illegal Governmental Activity

The application of the exclusionary rule to suppress evidence is appropriate only to evidence that is fruit of the illegal governmental activity. *Wong Sun v. United States,* 371 U.S. 471 (1963); *State v. Bainbridge,* 117 Idaho 245, 249 (1990). The test is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Wong Sun,* 371 U.S. at

488. Suppression is required if "the evidence sought to be suppressed would not have come to light but for the government's unconstitutional conduct." *State v. Wigginton*, 142 Idaho 180, 184 (Ct. App. 2005).

Officer Cromwell illegally prolonged his detention of Ms. Stone-Jones after the DUI investigation was complete. Had Ms. Stone-Jones not been illegally detained, the evidence located in her purse would not have been discovered. The State failed to meet its burden of showing that the evidence is untainted. Therefore, all the evidence collected after the impermissible detention must be suppressed as fruit of the illegal police activity.

II.

The District Court Abused Its Discretion When It Imposed Concurrent, Unified Sentences Of Twenty-Five Years, With Three Years Fixed; Seven Years, With Four Years Fixed; And Fourteen Years, With Four Years Fixed, Following Ms. Stone-Jones's Pleas Of Guilty To Possession Of A Controlled Substance With The Intent To Deliver, Possession Of A Controlled Substance, And Forgery

Given any view of the facts, Ms. Stone-Jones's concurrent unified sentences of twenty-five years, with three years fixed; seven years, with four fixed; and fourteen years, with four fixed, are excessive because they are not necessary to achieve the goals of sentencing. When there is a claim that the sentencing court imposed an excessive sentence, the appellate court will conduct an independent examination of the record, giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 77, 772 (Ct. App. 1982). Here, there are several mitigating factors that indicate Ms. Stone-Jones's character was not adequately considered by the district court.

Independent appellate sentencing examinations are based on an abuse of discretion standard. *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). When a sentence is unreasonable based on the facts of the case, it is an abuse of discretion. *State v. Nice*, 103 Idaho 89, 90 (1982). Unless it appears that confinement is necessary "to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case," a sentence is unreasonable. *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). Accordingly, if the sentence is excessive, "under any reasonable view of the facts," because it is not necessary to achieve these goals, it is unreasonable and therefore an abuse of discretion. *Id.*

There are multiple mitigating factors that illustrate why Ms. Stone-Jones's sentences are excessive under any reasonable view of the facts. First, Ms. Stone-Jones had an incredibly abusive childhood. An abusive childhood is a recognized mitigating factor. *State v. Gonzales*, 123 Idaho 92, 93 (Ct. App. 1993); *State v. Williams*, 135 Idaho 618, 620 (Ct. App. 2001). And, even though she is much older now, the environment in which she grew up still sheds light on her personality and actions. Ms. Stone-Jones explained that she was adopted when she was three months old and raised on a ranch on the Nez Perce reservation. (PSI, p.11.) Unfortunately, it appears that she was adopted primarily to serve as a ranch-hand and sexual slave for her adoptive father. Indeed, she said that her adoptive father sexually abused her until she was eleven years old. PSI, pp.11, 76.) That form of abuse finally ended when she threatened him with a handgun as he tried to molest her again. (PSI, p.11.) At that point, she said he never touched her again but explained that this defiant act was the

point in her life when her "aggressive behavior started." (PSI, p.11.) This is understandable, as she learned that the only way she could make the violence toward her stop was through the reciprocal use of violence.

Ms. Stone-Jones went on to say that even though the sexual abuse ended at that point, the verbal abuse began in earnest. (PSI, p.11.) She said that she was consistently told things such as "your (sic) not a real Stone because you were adopted" and "we only got you because there were no boys." (PSI. p.11.) She was also forced to work on the ranch milking cows, feeding pigs, and building fences, and this work was punctuated by severe physical abuse. (PSI, pp.76, 86.) She reported that her adoptive father regularly beat her and, in what appeared to be one of the last serious incidents before she moved out, she said that he broke a 2x4 over her head. (PSI, p.86.)

Ms. Stone-Jones found no solace outside her adoptive parents' home either. Because she was half Caucasian and half Native American, she explained that she was shunned by the white community and the Native American community alike. She said "[t]he Natives didn't like me cause (sic) I was white. The whites didn't like me cause (sic) I was a Native." (PSI, p.11.) As a result of all the negativity in her life, she reported that she tried to run away from home "at least six (6) times . . . until her uncle, the local sheriff would find her" and bring her home, and then her father would beat her severely for running away. (PSI, p.76.) Ms. Stone-Jones summarized this vicious cycle for her PSI. She said "[t]here isn't enough room here to explain my upbringing but I was a very hurt, confused, abused, lost, unwanted girl. I wasn't welcomed by any race or family it seemed to me. I'd call the cops on my dad when he'd beat me but the sheriff

was my uncle so nothing was done. I asked many people for help but no one wanted to go against my family." (PSI, p.11.)

In the midst of this turmoil, Ms. Stone-Jones met her future husband when she was 14 and he was 21. (PSI, p.11.) Her mother agreed to let her move in with the man if she promised to finish high school, which she eventually did. (PSI, p.86.) But unfortunately, Ms. Stone-Jones only traded one abusive home for another. She said that her husband, who was a member of a motorcycle gang, was a heavy drinker who physically and verbally abused her. (PSI, p.77.) In fact, apparently the abuse at his hands was so severe that she was hospitalized twice for the injuries she received. (PSI, p.86.)

Her difficulties continued as an adult. She told the PSI writer that she was raped by another motorcycle gang member when her husband was in prison. (PSI, p.12.) She also disclosed that her youngest child hung himself when he was only nine years old, shortly after he was apparently forcibly taken from Ms. Stone-Jones by his father. (PSI, p.13.) While she said she rarely consumes alcohol, she said her son's suicide precipitated a five-month period when she was drunk "all the time." PSI, p.17.) And finally, when she managed to contact her biological mother in approximately 1990, her mother told her that she put her up for adoption because she did not want to raise a mixed race child. (PSI, p.86.) Despite this admission, Ms. Stone-Jones said that she tried to maintain a relationship with her mother but "couldn't get over the fact that she had two other children but didn't keep me." (PSI, p.11.)

Not surprisingly, all of these issues led to long-term drug abuse as well as significant mental health issues. Substance abuse is a mitigating factor. *State v. Nice*,

103 Idaho 89, 91 (1982). Indeed, Ms. Stone-Jones said herself that "I turned to drugs, alcohol, and fighting to feel better and wanted." (PSI, p.11.) She said that she first tried methamphetamine when she was 18 and then used it on a daily basis with the exception of the times she was on probation, parole, or incarcerated. (PSI, p.17.) However, as discussed below, she noted that she managed to stay sober for 2 to 3 years when she lived in Montana recently. (PSI, p.17.)

Ms. Stone-Jones apparently also suffers with bipolar symptoms, manic depression, extreme anxiety, and post-traumatic stress disorder.[6] (PSI, p.15.) Mental illness has long been recognized as a mitigating factor. *State v. Santistevan*, 143 Idaho 527, 530 (Ct. App. 2006). Additionally, I.C. § 19-2523 requires a trial court to consider a defendant's mental illness as a sentencing factor. Ms. Stone-Jones's psychological evaluation stated that she also has Antisocial Personality Disorder. (PSI, p.82.) And, based in large part on her previous exposure to violence and her mental illness, it also revealed that she was considered a high risk to "engage in future general violence." (PSI, p.79.)

Despite all of her issues and these dire predictions, Ms. Stone-Jones recently demonstrated that she can and will help herself. And when she does, she is not an ongoing danger to society. She moved to Montana in approximately 2008 to get a new start. (PSI, p.77.) She told her psychological evaluator that "she had just gotten out of prison and moved to Montana in order to get away from the drugs in Idaho and she knew she needed help, so she checked herself into a psychiatric hospital." (PSI, p.77.)

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[6] The psychological evaluator opined that this was a result of "the abuse she endured from her father and her husband." (PSI, p.82.)

Her evaluator stated that "[s]he reportedly did well in Montana and was able to stay clean and sober from drugs and alcohol." (PSI, p.77.) The notes from her numerous counseling sessions there bear this out and show her progress as a result of her proactive approach to treatment and finding the proper medication for her conditions. For example, when she first arrived at the hospital, she was suffering from "insomnia, poor concentration . . . panic attacks with pounding heart, sweats and fear of dying." (PSI, p.85.) She was also "easily agitated and/or angered" and had "frequent feelings of worthlessness and hopelessness," and was often having dreams involving "past incidents of physical and sexual abuse . . . ." (PSI, p.85)

Her therapy notes cover a period of almost a year, starting in the spring of 2010. They make it clear that she was making solid progress with the help of a psychiatrist and a counselor. (See PSI, pp.91-147.) Indeed, by October of 2010, her counselor wrote that she "was able to fill all her prescriptions and that her symptoms are greatly reduced at this time." (PSI, p.98.) He went on to say that her "mood is much brighter today than the previous session and she states that her sleep has been good with few or no nightmares." (PSI, p.98.) By November, her counselor wrote that she was sleeping well, getting physical therapy and had also recently been through an MRI that revealed a spot on her brain. (PSI, p.99.) She also told her counselor that she was having much more success with controlling her temper. (PSI, p.99.) In the counselor's subsequent assessment, he wrote "Shirley presents with positive mood and effect. She feels that she is progressing and is able to recognize her accomplishments." (PSI, p.99.) He noted that she felt she was not yet able to directly address her past trauma and PTSD, so the counselor said he was continuing to focus on day to day functioning

and medical issues. (PSI, p.99.) However, by January, her counselor said she "expressed a willingness to begin processing some of her past trauma and the effects upon her current life." (PSI, p.102.)

The notes from her doctor, Julia Bell, show a similar, positive progression. Those notes indicate that she was having trouble affording her medications but going through appropriate channels to get them and overcoming her fear of being out in public. (*See e.g.* PSI, p.138.) The doctor also discussed with her why she was not using methamphetamine, and Ms. Stone-Jones said that there was violence when she was using, and the people she interacted with were thieves; she said that was inducement enough not to use. (PSI, p.142.) She admitted, however, that she did not necessarily feel better as a result of not using but wanted to remain abstinent nonetheless. (PSI, p.142.)

While these notes reveal that she continued to struggle at points, this is certainly not unusual for someone in therapy. But the overall tone of the notes showed that she was engaged and making progress. Unfortunately, before she could address all of her issues and make long-term changes, she said she left Montana to try to help her daughter-in-law in Boise who was trying to rid her home of drug users. (PSI, p.6.) She said that because she had been drug-free for three years, she felt that she was "strong enough not to use." (PSI, p.6.) She was in Boise for two months before she relapsed. (PSI, p.6.) And that relapse obviously led to these crimes. But Ms. Stone-Jones deeply regrets those decisions and realizes that her life in Montana was going well, and she should have stayed there. When asked about her plan for recovery from substances, she said that she planned to "[c]hange people places things. I moved to Montana 3

years ago and was clean. I loved my life there. I had clean friends. I don't even know anyone there uses. I plan to go home to Montana as soon as I can. I also go to counceling (sic) there that I placed myself into for help." (PSI, p.18.)

Ms. Stone-Jones admittedly has a significant prior record, and she has been labeled as a high risk for future violence. But none of this is surprising given her background. What is surprising is the fact that at age 44, she sought out a new place to live and engaged so successfully in therapy. She was proud of herself for doing that, and said that "[o]ne thing I was extremely proud of myself for doing was putting myself in the hospital because I felt like I was having a mental breakdown. And instead of going and looking for drugs, like I always did before, I put myself in the hospital and asked for help." (Tr. 9/18/13, p.214, Ls.13-23.) As a result, she was managing her temper and staying away from methamphetamine. Thus it is clear that she can still be a productive and positive member of society. Her issues with anger and addiction understandably run deep, but she was managing all of that effectively through proactive treatment in Montana. At her sentencing hearing, she said that her goal was to get back to Montana. (Tr. 9/18/13, p.219, L.25.) She said that she wanted to "get back on the medications that I need that we worked for two years to get me on." (Tr. 9/18/13, p.220. Ls.2-4.) She said that when she was there, she was "regular" and "stable" and "didn't have bad thoughts." (Tr. 9/18/13, p.220, Ls.4-5.) In short, she obviously discovered a sustainable and positive life for that brief period, and thus she said "I want to go back to Montana. That's where my heart and soul is." (Tr. 9/18/13, p.220, Ls.9-10.)

The district court, while it referenced Ms. Stone-Jones's background at sentencing, failed to adequately consider all of this mitigating information. In particular, when it discussed her sentencing, it stated "I am not going to, in this case, impose a life term. I do not believe that would be appropriate." (Tr. 9/18/13, p.232, Ls.20-22.) However, a term of 25 years is essentially a life sentence for a woman who is 47 years old. In light of the incredibly difficult life she has endured, she deserves a lesser sentence and an opportunity to return to Montana to heal herself once and for all. As it stands, even if she is released on parole at the end of her fixed time, she will still be living under supervision for the foreseeable remainder of her life. If she is successful in Montana, she deserves a chance to be truly free, not only from her past trauma but from any form of supervision.

Given all the mitigating factors here, Ms. Stone-Jones's sentence was excessive because it was not necessary to achieve the goals of sentencing outlined in *Toohill*. Shorter sentences would still ensure that there was significant retribution for the crimes. Additionally, when she is getting effective, personalized treatment, she has demonstrated that she is not a danger to society. But most importantly, shorter sentences would give Ms. Stone-Jones a chance to pursue meaningful rehabilitation more quickly and finally become a productive and positive member of society without the specter of a supervised existence for the rest of her life. Ms. Stone-Jones admitted that what she did was wrong and that she learned from her mistakes. (Tr. 9/18/13, p.217, Ls.17-22.) Given the facts of these cases, Ms. Stone-Jones's extended sentence was not necessary and was therefore unreasonable and an abuse of discretion.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 28th day of May, 2014, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

SHIRLEY STONE-JONES
INMATE #68719
C/O VALLEY COUNTY JAIL
PO BOX 1350
CASCADE ID 83611

TIM HANSEN
DISTRICT COURT JUDGE
E-MAILED BRIEF

NICHOLAS WOLLEN
ADA COUNTY PUBLIC DEFENDER'S OFFICE
E-MAILED BRIEF

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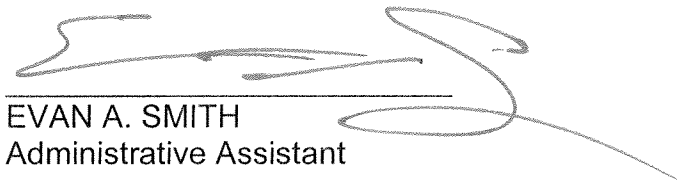
Hand delivered to Attorney General's mailbox at Supreme Court.



EVAN A. SMITH
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RPA/eas